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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2148 OF 2007

CDS Construction Company Pvt. Ltd.
and anr. ... Petitioners

Versus

State of Maharashtra and Ors. ... Respondents

Mr. C.U. Singh, Sr. Counsel with Ms. S.Nanavati for Petitioner.

Mrs. J.S. Pawar, A.G.P. for R.Nos. 1, 2, 4, 5 and 11.

Mr. N.L. Naik for R. NO. 8.

Mr.N.M. Ganguli for R. No. 6.

Mr. R.S. Apte for R.Nos. 9 and 10.

Ms.Neeta Karnik for Intervernor/Applicant.

CORAM: F.I. REBELLO &
R.M. SAVANT,JJ.
DATED: APRIL 30, 2007

P.C.:

. Rule. Heard forthwith.

. The petitioner approached this court to impugn the communication dated 20.11.2006 whereby the Deputy Labour Commissioner , Thane relying upon the Government Resolution has called on the Collector not to grant permission for construction as they have not complied with the requirement of the said G.R. The reference made by the Deputy Labour Commissioner is to the directions issued by the

State Government under Section 154 of the M.R.T.P. Act dated 16.7.2004. The relevant portion reads as under :

> "Before granting building permission for residential purpose from industrial - purpose at the site of closed companies within the Thane Municipal Corporation area, ait is required to obtain certificate from Deputy Commissioner of Labour, Thane that all workers of tge company at the concerned, site, are paid their legal dues by the company."

. The said direction was sought to be challenged on various grounds.

. At the hearing of this petition, on behalf of the Petitioners, their learned counsel has restricted himself to submitting without going into illegality or invalidity of the said directions that the said direction will only apply if the petitioners who are purchasers of the property, were converting user of the land from Industrial to residential. Our attention is firstly invited to the letter addressed to the deputy Commissioner dated 20.1.2007 where the Petitioners informed the Deputy Labour Commissioner that they are constructing one I.T. Park. In the

Petition as filed at ground "J" one of the ground raised is as under :

> "The G.R. dated 16.7.2004 is not applicable to the first Petitioners proposal for development of the leased property inter alia, for the reason that the 1‘st Petitioner proposes to develop the leased property for the purposes of manufacture of Information Technology services which is an industry (and not for the residential purposes contemplated within the G.R./Order)."

. It will therefore, be clear that if there is no change of user from industrial to residential, the said G.R./Order would not be applicable. The communication by the Deputy Labour Commissioner, Thane to the Collector would therefore, be clearly without jurisdiction. The Deputy Commissioner of Labour, could have made the impugned communication only if there was material before him or permission to use the property for residential purposes. That not being the case, the Petition as filed will have to be allowed.

. We make it clear that in the instant case, apart from Respondent No. 6, some others have filed

affidavits contending that they have dues. We are not going into that aspect of the matter considering the reliefs as prayed for in the present petition. Whatever rights the workers may have, that issue is kept open and will be open to the Union of the Workers to independently agitate those rights. The disposal of this petition will not stand in the way of the workers/Union independently agitating their rights.

. In the light of that, Petition made absolute in terms of Prayer Clauses (a) and (c) if the property is being used for industrial purpose and not for residential purpose.

. In the circumstance of the case, there shall be no order as to costs.

(R.M. SAVANT,J.) **(F.I.REBELLO, J.)**